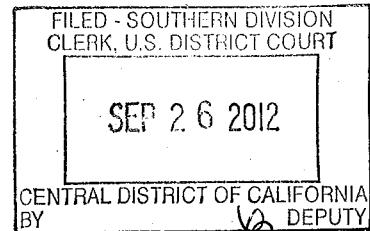


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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SOUTHERN DIVISION

11  
12 UNITED STATES OF AMERICA, } Case No. SA CR 09-222-AG  
13 Plaintiff, }  
14 v. }  
15 ROBERT WAYNE BLACKBURN }  
16 and DAVID JESS MILLER, }  
17 Defendants. }  
18

19 This matter came on for hearing on July 23, 2012, pursuant to the Motion  
20 For Discovery filed on behalf of defendant David Miller and joined in by  
21 Defendant Robert Wayne Blackburn.

22 The Court, having read the moving, opposition and reply papers and heard  
23 argument of counsel, now rules as follows:

24 SEARCH WARRANTS AND AFFIDAVITS:

25 Defendant Miller moved in item 11 of his motion for all search warrants and  
26 supporting affidavits regarding any search of Mr. Miller's residence or business or  
27 any business premises of JAM Pharmaceuticals. The government advised the  
28 Court that it had produced the search warrant and supporting affidavit for the

1 search of the premises of E-Tail, a business of Mr. Miller's, in April, 2007 but that  
2 it had not yet produced the warrant or affidavit for two storage units used by E-  
3 Tail that were also searched in 2007. The Court orders the government to obtain  
4 permission to disclose these two search warrants and affidavits for the E-Tail  
5 storage units and to produce them to defendant by December 1, 2012.

6 **DOCUMENTS AND OTHER MATERIALS TAKEN DURING**  
7 **SEARCHES:**

8 As to any computers taken or imaged during the searches of E-Tail's  
9 business premises and storage units, the parties agreed that the government would  
10 supply defendant with an image of all computers seized and retained by the  
11 government and copies of all images created. The court orders that the computer  
12 images be produced no later than December 1, 2012.

13 As to documents and records seized during the searches of E-Tail's business  
14 premises and storage units, the Court orders the government to make all such  
15 documents available for inspection no later than December 1, 2012.

16 **INVESTIGATIONS IN OTHER DISTRICTS:**

17 To the extent that materials were obtained by the government during the  
18 searches of E-Tail's business premises and storage units, or other criminal  
19 investigation in this district that is related to E-Tail, and such materials would be  
20 subject to discovery in the instant prosecution if they had been obtained in the  
21 investigation of the instant case, the government agreed to produce or make  
22 available for inspection such materials. It is anticipated that the preceding  
23 provisions regarding search warrants for and documents and digital data seized at  
24 E-Tail's business premises and storage units will constitute much of this  
25 production. If there are additional materials covered by this paragraph, the Court  
26 orders that they be produced or made available for inspection by December 1,  
27 2012.

28

1        In regard to any investigation of Miller in other districts, the following  
2 discovery is required: In regard to interviews by the government of individuals  
3 who were employees of JAM, which were conducted as part of investigations of  
4 Mr. Miller in other districts, the government shall produce the portions of reports  
5 of such interviews that relate to JAM or to the time period covered by this case,  
6 that are material to the preparation of the defense in the instant case, or that  
7 constitute exculpatory evidence in the instant case under *Brady v. Maryland*, 373  
8 U.S. 83 (1963). The government shall also inquire as to whether government  
9 personnel working on such other investigations in other districts have obtained  
10 documents that relate to JAM or to the time period covered by this case, that are  
11 material to the preparation of the defense in the instant case, or that constitute  
12 exculpatory evidence in the instant case under *Brady* and, if such documents exist,  
13 the government shall request copies of them. The Court orders the government to  
14 produce the portions of any interview reports that are covered by this paragraph  
15 and to make the inquiry and request for documents described above by December  
16 1, 2012.

17        If defendant becomes aware of other particular materials that might be in the  
18 possession of government personnel working on the investigations of Mr. Miller  
19 in other districts and that could be subject to discovery in the instant case,  
20 defendant shall notify the government and request that they be produced.  
21 Defendant also may request a further order of the Court to require production of  
22 such materials, which request would be considered to be within the scope of and  
23 part of the pending motion for discovery.

24        INFORMATION RELATED TO SEALING OF THE INDICTMENT AND  
25 THE TIMING OF DAVID MILLER'S INITIAL APPEARANCE:

26        The government indicted the defendants on November 18, 2009, in a sealed  
27 indictment. The indictment was not unsealed until on or about December 7, 2011,  
28 over two years later.

1       Defendant moved in items 16, 21 and 22 for information about the sealing  
2 of the indictment and the basis therefore as well as information about any efforts  
3 made by the government to advise either of the defendants of the charges or to  
4 arrest them. Mr. Miller seeks (a) all reports and other documents reflecting any  
5 efforts or attempts to arrest Mr. Miller (Item 16), and, (b) an explanation as to why  
6 the indictment was sealed and kept under seal for two years (Item 21).

7 The information requested could bear on a number of legal issues including  
8 the Statute of Limitations and the right of Mr. Miller to a speedy trial.

9 Accordingly, the Court suggests that the government produce reports or other  
10 documents reflecting the basis for the sealing of the indictment and any attempts  
11 to arrest Mr. Miller or Mr. Blackburn while the indictment was under seal. The  
12 Court further suggests to the extent not apparent from any of the documents that  
13 the government advise counsel for defendants of the basis for the sealing of the  
14 indictment, of any efforts the government made to arrest Mr. Miller or Mr.  
15 Blackburn during the period the indictment was under seal and why the  
16 government did not move to unseal the indictment during the same period. The  
17 Court suggests that the government supply this information no later than  
18 December 1, 2012.

20 Dated: Sept 26, 2012

Honorable Andrew J. Guilford  
United States District Judge

(Signed based on representation  
that AUSA Larry Kille has agreed  
to this)